

Report Title: *Resource Extraction and Aboriginal Communities in Northern Canada: Political Considerations*

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ISBN 978-1-926543-05-5
(National Aboriginal Health Organization. Print)

Date Published: October 2008

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This report should be cited as:

National Aboriginal Health Organization. (2008). *Resource Extraction and Aboriginal Communities in Northern Canada: Political Considerations*. Ottawa: Author.

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Under Section 35 of the Canadian Constitution Act, 1982, the term Aboriginal Peoples refers to First Nations, Inuit and Métis people living in Canada. However, common use of the term is not always inclusive of all three distinct people and much of the available research only focuses on particular segments of the Aboriginal population. NAHO makes every effort to ensure the term is used appropriately.

Resource Extraction and Aboriginal Communities in Northern Canada: Political Considerations

INTRODUCTION

It is difficult to separate the political dimensions of northern resource development from the economic dimensions that underlie and guide many political decisions. This is especially true at the provincial, territorial and federal levels, where the current political climate and the world price and demand for natural resources determine whether a project will proceed, and the rules that guide its development and the benefits that will follow. It is at the regional and local levels, however, where natural resource projects have the most influence in terms of culture, social issues and local economies. The decisions and options available to Aboriginal governments are guided more by these community concerns as well as the desire to conserve, protect and respect traditional lands and waters.

In terms of Aboriginal politics, decisions related to resource development projects are guided by existing land claims agreements and negotiated Impact Benefit Agreements (IBAs). All of the land claims negotiated in the north include some form of self-government, although details differ with almost every claim. In the Northwest Territories (NWT) and Yukon, Aboriginal governments have control over defined areas of land, and exercise control over education and social services, among other things. In some cases, the Aboriginal government may be as small as the single Déline community in NWT. In Nunavut, Inuit self-government is the territorial government itself. In Labrador, the newly created Nunatsiavut government is similar in structure to the Nunavut government, but its lands do not constitute a Canadian territory.

Aboriginal Peoples are achieving greater self-determination through instruments like Impact Benefit Agreements. The agreements ensure that communities benefit from such resource development initiatives such as mining, oil, gas, forestry, and hydroelectric projects. IBAs also ensure compensation for the potential negative impacts of these projects on communities, lands and traditional ways of life (O'Reilly, 2000). However, there is no consistent definition for an IBA or a complete record of all the agreements that have been negotiated. Confidentiality and non-disclosure provisions in most agreements may prevent Aboriginal governments from sharing their experiences and guiding others on how to negotiate effective IBAs.

In the Northwest Territories and Nunavut, the federal government makes the rules about what kind of development and how much of it is allowed, and how much money the government gets from developers. The territorial and Aboriginal governments would like to take over that decision-making responsibility and have direct control over how the money is used. The Yukon has already negotiated the Yukon Devolution Transfer Agreement, which gives the territorial government greater control over resource development decisions.

This document will review some of the dimensions that guide the decision-making processes of Aboriginal governments with respect to resource extraction development.

Impact Benefit Agreements (IBAs)

Most of the north now has rules that insist that resource development companies negotiate Impact Benefit Agreements with local communities. For example, the Yukon Oil and Gas Act (1997) states that companies must negotiate IBAs with local First Nations when they want to develop oil and gas resources. Alternatively, land claims agreements may require resource development companies to negotiate IBAs for development on settlement lands. For example, the Labrador Inuit Land Claims Agreement requires IBAs for all major resource development projects, and these are subject to approval by the Nunatsiavut government.

Impact Benefit Agreements

IBAs may include the following:

- Quotas for employment and details about training programs
- Hiring a community liaison person
- Dispute resolution mechanisms
- Increasing community business capacity and contracting opportunities
- Counselling and support programs
- Health and wellness programs
- Education programs
- Annual payments
- Sometimes, scholarships and funding for cultural activities (e.g. caribou hunts)

(Weitzner, 2006)

Even where there are no laws requiring IBAs, development companies are realizing that it is in their best interests to negotiate them. Otherwise, the local population may oppose the project and the company may not get the needed approval to proceed. These can be complicated and time-consuming negotiations that place a great deal of pressure on Aboriginal governments. On the one hand are the demands from competing and impatient mining companies that want to stake, explore and develop a project; on the other hand there are Aboriginal interests to protect the people, their culture, and their environmentally fragile traditional lands.

IBAs often include payments or royalties. The payments may be in the form of a one time only payout or an annual cash payout. For royalties, the amount paid varies depending on the formula used to calculate the annual amount. For example, a royalty may be paid based on how much profit was made by the development project at the end of the year. Or, the royalty may be based on the total market value of the resources or the total volume (or amount) of resources extracted in a year. These royalties may be calculated after the resource development company has deducted a variety of operating expenses, the cost of wear and tear on facilities and equipment, and portions of the costs for exploration and construction of the facilities. These deductions serve to offset the high cost of projects in the North, and serve as incentives for development.

IBAs also may include training opportunities, preferential hiring and contracting opportunities, part ownership in the project and a share of the profits, and a range of other social and economic benefits.

Environmental Assessments

Resource development companies are under obligation to consult with communities that will be affected by a development project. Besides negotiating IBAs, communities may participate in

environmental impact assessments (EIAs) and socio-economic reviews. These are part of the permit and licensing process for development projects. Aboriginal groups typically have an opportunity to provide comments and recommendations. If a proposed project is considered to be important to the local population, public hearings may be held to seek input into the review. In the end, any environmental agreements that result from these assessments are usually signed between federal, provincial or territorial governments, and not Aboriginal governments.

EIAs are one of the most effective ways for communities to voice their concerns and to influence the outcome of development projects and related agreements. In fact, Section 10(1) of the 1995 Canadian Environmental Assessment Act requires Band Councils to ensure that EIAs are conducted for any project involving federal money and taking place on Reserve land. The Act does not restrict assessment to purely “natural” factors. Environmental effects can include changes in the health and socio-economic conditions of local populations, and impacts on Aboriginal cultural heritage, including changes to sites that have historical, archaeological or architectural significance (Hipwell et al, 2006).

During environmental reviews, Aboriginal groups can declare themselves as interveners and can give input into the review’s terms of reference, participate in technical sessions and public hearings, and review the company’s environmental assessment report, etc.

The environmental review process can be expensive, and companies may be reluctant to undertake it if they are simply seeking a permit to prospect or explore for resources. The ability of an Aboriginal group to respond quickly and insist a review is one way to exercise control over the number of projects that take place on traditional lands. As Weitzner (2006) notes in her report on mining and the Lutsel K’e Dene First Nation, “people are starting to see the outcomes of mining on the community, and question whether another mine on their traditional lands and ‘participating’ in another IBA would do more harm than good for the community,” (p.12).

Socio-Economic Assessments

Socio-economic assessments are usually conducted by mining and other resource development companies. Their aim is to assess the impact of resource development in light of current social and economic conditions in Aboriginal communities. The loss of traditional knowledge, changes in

Environmental Agreements

Key elements of Environmental Agreements include:

- Establishment of independent monitoring agencies
- Compliance
- Security deposits
- Reporting
- Equal consideration of traditional and scientific knowledge
- Environmental management plans
- Community involvement in environmental monitoring and training
- Reclamation and closure
- Dispute resolution mechanisms

(Weitzner, 2006)

social structure, cultural erosion, and weakened social structures are important concerns. These studies can help communities to anticipate and prepare for a development project. They can also provide information on what should be negotiated in an IBA. If a socio-economic assessment is not required by law, an Aboriginal group may ask for a study to be conducted. Preferably, the developer would pay for this work to be done. Like environmental agreements, Aboriginal governments usually are not party to any socio-economic agreements that may result from this assessment.

Socio-economic assessments can be broad in scope. They often involve interviews and the use of community health surveys, cultural vitality surveys, youth surveys, and leadership review surveys. In addition, there may be the mapping of trap lines, harvesting locations, cabins, burial sites, and trails. A socio-economic assessment may look at:

Labour Market:

This component considers the number of new jobs that will be created by a new project, and the wages and salaries that will be paid; the extent to which local residents can improve their skills, knowledge and training; the extent to which local labour can meet the project's needs for skilled and experienced labour; and whether the community will lose skilled and experienced labour as people seek new job opportunities with the project, and what the extent of that loss might be.

Community Economics:

This component considers the extent to which new community residents will increase the demand for local goods, services and houses, and drive up prices; how many new business opportunities will be created through expanded markets and improved infrastructure; the consequences of higher land prices, overuse of public infrastructure, increased demand on social services, and pressure on cultural assets; the extent to which new roads, bridges, and power lines will benefit future projects; and the amount of new technologies, production processes, skills, and knowledge that the new project will introduce.

Business:

This component considers the ability of local businesses to supply goods and services to a project; the extent to which the project will result in an increased local supply of complementary goods and services—including newly created spin-off businesses; and the extent to which the project will have

Socio-economic Agreements

Socio-economic Agreements usually identify:

- Hiring practices, employment targets and incentives
- Recruitment strategies, apprenticeships and training
- Literacy programs
- Support for women and families
- Business opportunities and financing
- Social and cultural well-being
- Establishing a Socio-economic Monitoring Agency
- Funding
- Dispute resolution mechanisms

(Weitzner, 2006)

to seek supplies and services from outside the region or territory.

Government:

This component considers the revenues a project will generate for federal, territorial, and Aboriginal governments and the costs that will be incurred. The value of personal and corporate income taxes, sales taxes, and royalty payments, etc. are considered against the increased demand on roads, buildings, sewer and water systems, and waste disposal, etc. working beyond what they were designed to support. This component also considers changes in economic output as a measure of Gross Domestic Product.

As noted, information generated from these studies guide the agreements signed by resource companies and governments. The information is also valuable to Aboriginal governments in their negotiations of IBAs.

Devolution

Devolution holds the prospect for Aboriginal governments to gain greater power to regulate natural resources such as land, water, and wildlife. Generally, the process involves passing control from the federal government to local governments in the North. Currently, only in the Yukon has this devolution of control taken place. The challenge for First Nations is that they are finding it necessary to hire non-Aboriginal resource managers because they currently lack Aboriginal personnel who are qualified to take on the positions. Thus, resource management still remains largely in the control of non-Aboriginal individuals.

Definition: Devolution

Devolution refers to the transfer of jurisdiction and authorities to territorial and Indigenous and self-governments from the federal government, ranging from authority over such areas of health, to the regulation of lands and resources. Devolution also encompasses the transfer of ownership and control over lands and resources. Unlike in provinces, underlying title remains with Canada; thus there is no "Crown" in right of the territories.

(Fox&Mills, 2007)

A key concern about devolution Aboriginal governments have identified is that the transfer of lands and associated management authorities and jurisdictions, as well as the revenues that may be generated from the use of resources, should not undermine recognized and unrecognized Aboriginal rights—including Aboriginal rights to self-government. In addition, any negotiated resource revenue sharing arrangements must maximize the amount available to northern governments. Aboriginal governments—especially those with self-government authorities—require sufficient revenues to finance programs and services directed towards Aboriginal and public government responsibilities. Finally, Aboriginal governments have expressed the need for any post-devolution implementation and intergovernmental arrangements to include meaningful participation of Indigenous governments.

Under the current management and royalty mechanisms controlled by the federal government, resources have been developed primarily in terms of national interests. Through devolution, the interests can shift in favour of Aboriginal governments and northern residents. This level of control becomes broader in scope than the efforts available to Aboriginal governments as they negotiate fair terms under project-specific Impact Benefit Agreements, Environmental Impact Assessments and Socio-economic Assessments.

Conclusions

The desire to exploit the vast mineral, oil and gas resources of the North has fostered the political maturity of Aboriginal Peoples. Many of the land claims in the Northwest Territories, for example, started when companies began talking about the Mackenzie Valley pipeline. In many cases, with the establishment of land claim and self-government agreements, the requirement to consult and to address Aboriginal concerns is constitutionally protected. This rise in Aboriginal political influence has compelled industries and governments to provide the assistance needed to reduce the negative economic and social impacts of northern resource development. Impact Benefit Agreements are the primary mechanism used by resource development companies to gain Aboriginal approval for a project.

Now that some claims are settled, resource development projects are important to Aboriginal governments. The land claims being settled now talk about self-government, allowing Aboriginal people to exercise more control over their lives. But establishing and operating a government body requires money to support the operation of the government and to provide programs and services. A dependency on resource-related revenues, however, may create tension if some people or communities do not want their Aboriginal government to continue negotiating deals around resource extraction. For example, as noted above, some Lutsel K'e Dene question whether continued mining on traditional lands is doing more harm than good.

Questions to Consider:

1. If you are covered by an IBA, how well do think it is working for you and for other people?
2. How would you improve the terms of the IBA?
3. Are IBAs the best tool to get what you want from developers? If not, how else would you work with developers?
4. Should IBAs be confidential or public?
5. Do you feel that you can control development, or is development controlling you? What do you need to gain control of development?
6. Have you developed a consultation protocol? How well does it meet your needs?

Further Reading:

- Hipwell, W. Mamen, K., Weitzner V. & Whiteman, G. (2002). *Aboriginal Peoples and Mining in Canada: Consultation, participation and prospects for change*. Ottawa, ON: The North–South Institute.
www.nsi-ins.ca/english/pdf/syncanadareport.pdf
- Impact and Benefit Agreement Research Network. (n.d.) *List of Known IBAs*. http://www.impactandbenefit.com/IBA_Database_List.html
- Irlbacher-Fox, S. & Mills, S.J. (2007). *Devolution and Resource Revenue Sharing in the Canadian North: Achieving Fairness Across Generations*. Toronto, ON: Gordon Foundation.
http://www.gordonfn.org/resfiles/Forum_DiscussionPaper.pdf
- O'Reilly, K. & Eacott, E. (2000). *Aboriginal Peoples and Impact and Benefit Agreement: Summary of the Report of a National Workshop*. *Northern Perspectives*, 25:4.
<http://www.carc.org/pubs/v25no4/2.htm>
- Weitzner, V. (2006). *“Dealing Full Force”: Lutsel K’e Dene First Nation’s Experience Negotiating with Mining Companies*. Ottawa, ON: The North–South Institute.
www.nsi-ins.ca/english/pdf/lk-en.pdf

